IN THE HIGH COURT OF JUDICATURE AT BOMBAY

SECOND APPEAL NO.72 OF 2004

Baburao Dnyanu Patil .. Appellant

Vs.

Vasant Tukaram Patil (Bhagat) .. Respondent

Mr. S.B. Shetye h/f Ms. P.S. Patil for appellant.
Mr. A.M. Kulkarni for Respondent.

CORAM : P.V. KAKADE, J.

Date : November 24, 2004.

P.C.:

1. This is an appeal against the Judgment and Order passed by the Addl. District Judge, Sangli dated 30th August 2003 dismissing the appeal of the appellant and confirming the Judgment and Decree passed by the Joint Civil Judge, Junior Division, Sangli dated 7/4/1998 whereby the appellant was directed to hand over vacant possession of the suit premises and other consequential reliefs.

2. I have heard learned counsel for both the parties. The appellant came with a case that he was permanent tenant and respondent was owner of the suit property. The suit was filed by the respondent-landlord for eviction of the appellant from the suit property on the ground that rent was not duly

paid as per the agreement and hence notice under Section 106 of the Transfer of Property Act was issued terminating the tenancy. The learned trial judge adjudicated the dispute on merits and came to the conclusion that termination is legal and valid and, therefore, plaintiff was entitled to recover possession of the suit property from the appellant-defendant. The appeal was carried to the District Court where after hearing both the sides the learned Addl. District Judge came to the conclusion that the reasonings adopted and findings recorded by the trial judge were just, proper and legal and consequently appeal came to be dismissed. Hence the present appeal.

3. At the out set it may be noted that Mr. Shetye the learned counsel for the appellant sought to raise the issue to the effect that it was admitted position that earlier suit was filed against the present appellant in the year 1983 which was compromised between the parties on 8/4/87 and thereby permanent tenancy was created and hence the termination after notice of 15 days as contemplated under Section 106 of the Transfer of Property Act would not be legal and, therefore, the learned lower Appellate Court has erred in holding that the

termination of the tenancy was legal and valid.

4. Firstly, it may be noted that this is not a substantial question of law but it is a mixed question of law and fact which need not be taken into account at this stage in second appeal. Moreover, it is evident that this challenge was not raised by the defendant in his pleadings but was only urged at the stage of First Appeal. The learned Lower Appellate Judge has rightly discarded the said argument on the basis that the defendant failed to raise any pleadings to that effect and it was not open for him to agitate the issue in the course of the argument only. Moreover it was also held that the when admittedly the permanent tenancy was created and the appellant was agreed to pay monthly rent at the rate of Rs.37/- in such case 15 days notice was sufficient for terminating the tenancy. Moreover it also cannot be overlooked that consent terms were restricted for enhancement of rent and there was no question of creation of fresh tenancy in favour of the defendant. In view of this position I hold that there is no substantial question of law involved in this appeal and as such the concurrent findings recorded by both the courts below cannot be interfered with.

5. It is now well established legal position that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. This is especially so when the findings recorded by both the courts below are found to be just, proper and legally correct.

6. In the result, the appeal stands dismissed in limine.

. At this stage the learned counsel for the appellant made submission that some time may be granted to vacate the suit premises. This submission is stoutly challenged on behalf of the respondent. However, taking into consideration all the aspects urged in this regard, it is directed that the appellant shall vacate the suit premises within six months from the date of this order on condition that he shall file undertaking to that effect within four weeks in this court and shall continue to pay the rent of the suit premises. Undertaking to be filed by all the adult members of the appellant’s family.

(P.V. Kakade, J.)